

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:NCA:SF:TL-N-4025-98

BAKranzthor

date: JUL 23 1999

to: Assistant Chief Counsel (Field Service) CC:DOM:FS

from: District Counsel, Northern California District

subject: Request for Post-Review of Significant Advice
[REDACTED]
Recommended Language for Form 872

We request post-review of significant oral advice we offered the [REDACTED] audit team concerning the proper party to sign a Form 872. We have attached a copy of our memo to Exam dated July 22, 1999.

We believe this advice qualifies for post-review under CCDM (35)3(19)4(4) because the advice involves the application of well-settled principles of law to the facts. We also consulted informally with Vince Daly (CC:DOM:FS:CORP).

FACTS:

[REDACTED] filed a consolidated return for [REDACTED] in [REDACTED]. [REDACTED] merged into [REDACTED] (a statutory merger, with [REDACTED] surviving, and [REDACTED] ceasing to exist).

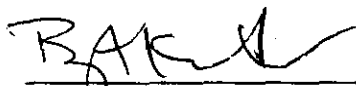
DISCUSSION:

Treas. Reg. § 1.1502-77T(a)(1) states that -77T applies if the common parent of a consolidated group ceases to exist. Section 1.1502-77T(a)(3) provides, "A waiver of the statute of limitations with respect to the group given by any one or more corporations referred to in paragraph (a)(4) of this section is deemed to be given by the agent of the group." Section 1.1502-77T(a)(4) includes in its list of corporations referred to in paragraph (3) "A successor to the former common parent in a transaction to which section 381(a) applies."

A statutory merger is a transaction to which section 381(a) applies. Accordingly, we

recommended that Exam secure a Form 872 signed on behalf of "[REDACTED]
[REDACTED] (EIN [REDACTED]), Successor in Interest to [REDACTED] (EIN [REDACTED]
[REDACTED] and as Alternative Agent for the [REDACTED] (EIN [REDACTED]
[REDACTED]) consolidated group."

We also inquired whether [REDACTED], reported any interests in partnerships on its [REDACTED] return. Since it did, we also recommended that Exam include standard language in the Form 872 extending the statute on limitations on assessing partnership related adjustments.


BRYCE A. KRANZTHOR
Attorney

Attachments
cc: Assistant Regional Counsel (TL)

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:NCA:SF:TL-N-4025-98

BAKranzthor

date: July 22, 1999

to: Chief, Examination Division, Northern California District
Attn: Revenue Agent Kathleen Jue

from: District Counsel, Northern California District, San Francisco

subject:

Recommended Language for Form 872

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

In response to your FAX received June 24, 1999, (together with supplemental faxes received July 6, 1999, July 19, 1999, and July 22, 1999) we recommend that the Form 872 to extend the statute of limitations on assessment for the [REDACTED] year of [REDACTED] [REDACTED] be signed on behalf of "[REDACTED] (EIN [REDACTED]), Successor in Interest to [REDACTED] (EIN [REDACTED]) and as Alternative Agent for the [REDACTED] (EIN [REDACTED]) consolidated group."

We also recommend that the following language be included in the Form 872 :

Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items (see section 6231(a)(3)), affected items (see section 6231(a)(5)), computational adjustments (see section 6231(a)(6)), and

partnership items converted to nonpartnership items (see section 6231(b)). This agreement extends the period for filing a petition for adjustment under section 6228(b) but only if a timely request for administrative adjustment is filed under section 6227. For partnership items which have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit under section 6532, but only if a timely claim for refund is filed for such items.

If you have any questions, please contact me at (415) 744-9211.

/s/ BRYCE A. KRANZTHOR
BRYCE A. KRANZTHOR
Attorney